



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-9978-52-Region 9]**

### **Public Water System Supervision Program; Supplemental Primary Enforcement**

#### **Responsibility Approval for the Navajo Nation**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notification of tentative approval.

---

**SUMMARY:** Notice is hereby given that the Environmental Protection Agency (“EPA”) has determined that the Navajo Nation meets the requirements under Section 1451 of the Safe Drinking Water Act (“SDWA”) and the corresponding regulations for the purpose of the Navajo Nation being eligible to administer its previously approved Public Water System Supervision (“PWSS”) Program under the SDWA in an additional area of the Navajo Reservation and for additional public water systems on tribal trust land in the Eastern Navajo Agency. Notice is also hereby given that the EPA has determined that the Navajo Nation has met the requirements under the SDWA regulations for primary enforcement responsibility (“primacy”) and therefore intends to approve the Navajo Nation’s revision to its PWSS Program to include the new area and water systems.

**DATES:** Requests for a public hearing must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Information relating to EPA’s tribal eligibility and primacy determinations are available for inspection between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, except official Federal and Navajo holidays, at the following offices: Navajo Nation

Environmental Protection Agency, PWSS Program, Old Museum Building (Building W008-042 on the Fair Grounds), P.O. Box 339, Window Rock, Arizona 86515; and EPA, Region 9, Water Division, Drinking Water Management Section (WTR-3-1), 75 Hawthorne Street, San Francisco, California 94105.

**FOR FURTHER INFORMATION CONTACT:** Bessie Lee, EPA Region 9, Water Division, Drinking Water Management Section, at the address given above; telephone number (415) 972–3776; email address: lee.bessie@epa.gov.

**SUPPLEMENTARY INFORMATION:** *Background.* On October 23, 2000, EPA first determined that the Navajo Nation had satisfied the requirements of Section 1451 of the SDWA, 42 U.S.C. 300j-11, and EPA’s regulations, 40 CFR 142.72 through 142.78, and was therefore eligible to obtain primacy for its PWSS Program under Section 1413 of the SDWA, 42 U.S.C. 300g-2, and EPA’s regulations, 40 CFR 142.10 and 142.11, for (a) all public water systems within the boundaries of the formal Navajo Reservation (except for the systems located in the former Bennett Freeze area and a small number of other public water systems expressly excluded from the eligibility determination), (b) all public water systems within the three formal Satellite Navajo Reservations of Alamo, Canoncito, and Ramah, and (c) specific identified public water systems on tribal trust land in the Eastern Navajo Agency. The Navajo Nation had omitted the former Bennett Freeze area from its initial PWSS Program application due to ongoing litigation with the Hopi Tribe regarding jurisdictional control of the area. That litigation was resolved in Honyoama v. Shirley, No. 2:74-CIV-842 (D. Ariz.) (Order and final judgment, December 4, 2006, approving and incorporating the terms of the Navajo Nation-Hopi Tribe Intergovernmental Compact and establishing that the former Bennett Freeze lands are within the exterior boundaries of the Navajo Nation Reservation).

On December 4, 2014, the Navajo Nation applied to supplement its approved PWSS Program to cover the additional area within the Western Navajo Agency of the Navajo Reservation (which covers the former Bennett Freeze lands) and two water systems located on tribal trust land within the Eastern Navajo Agency that had been excluded from the original primacy eligibility determination (namely, the Standing Rock Community School-BIA and the Thoreau High School water systems). The Navajo Nation later requested that EPA not make any determination in regard to the Cameron Trading Post water system, which is located on nonmember fee land within the Western Navajo Agency, and therefore EPA's determinations do not include this system.

On March 22, 2018, as outlined in its decision document, EPA determined that the Navajo Nation meets the following requirements of Section 1451 of SDWA and 40 CFR 142.72 and 142.76 for purposes of eligibility to administer supplemental primacy for the additional area and water systems:

- (a) The Indian Tribe is recognized by the Secretary of the Interior.
- (b) The Indian Tribe has a tribal governing body which is currently "carrying out substantial governmental duties and powers" over a defined area (*i.e.*, is currently performing governmental functions to promote the health, safety, and welfare of the affected population within a defined geographic area).
- (c) The Indian Tribe demonstrates that the functions to be performed in regulating the public water systems that the applicant intends to regulate are within the area of the Indian Tribal government's jurisdiction.

(d) The Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of administering (in a manner consistent with the terms and purposes of the Act and all applicable regulations) an effective Public Water System program.

On May 31, 2018, EPA also determined that the Tribe meets the requirements for primacy under the Section 1413 of SDWA and 40 CFR Part 142, Subpart B, for the additional area and systems. In its original approval of the Navajo Nation's primacy program, EPA had determined that the PWSS Program met all of the requirements of 40 CFR 142.10 and 142.11 for primacy for public water systems within the Navajo Nation Reservation. Therefore, EPA has determined that the Navajo Nation's previously approved PWSS Program meets the requirements for primacy under 40 CFR 142.10 and 142.11 with respect to the new area and water systems. Upon the effective date of the primacy approval, the Navajo Nation will have 12 additional public water systems subject to its jurisdiction.

In sum, EPA has concluded that:

1. The Navajo Nation meets the requirements of Section 1451 of SDWA and 40 CFR 142.72 through 142.78 and is therefore eligible for primacy for the additional area and water systems included in EPA's determinations, and
2. The Navajo Nation meets all of the primacy requirements of 40 CFR 142.10 and 142.11 with respect to the additional areas and water systems included in EPA's determinations.

*Public Process.* Under 40 CFR 142.13, any interested person, other than a federal agency, may request a public hearing on these determinations. A request for a public hearing must be submitted by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, to the Regional Administrator at the EPA Region 9 address shown above. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. If

a valid request for a public hearing is made by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], EPA Region 9 will hold a public hearing.

Any request for a public hearing shall include the following information: 1. The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; 2. A brief statement of the requesting person's interest in the Regional Administrator's determinations and a brief statement of the information that the requesting person intends to submit at such hearing; and 3. The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Under 40 CFR 142.13(g), if EPA Region 9 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on his or her own motion, these determinations shall become final and effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], and no further public notice will be issued. EPA Region 9 will provide public notice of any public hearing held pursuant to a request submitted by an interested person or on EPA's own motion. If a public hearing is held, EPA Region 9 will issue an order either affirming or rescinding the determination. If EPA Region 9 affirms the determination, it will become effective as of the date of the order. 40 CFR 142.13(f).

Authority: Sections 1413 and 1451 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300g-2 and 311j-11; and 40 CFR 142.10, 142.11, 142.13, and 142.72 through 142.78

Dated: May 16, 2018.

Deborah Jordan,  
Acting Regional Administrator,  
EPA, Region 9.

[FR Doc. 2018-11320 Filed: 5/30/2018 8:45 am; Publication Date: 5/31/2018]